INDEMNITY—SURETY'S LIABILITY ON A BUILDING CONTRACT—HOW CONSTRUED.—The plaintiff permitted the Aimwell Co., its tenant, to improve the premises upon their giving a bond to which the defendant was surety, one of the conditions being that the Aimwell Co. would pay, satisfy and discharge all claims of builders, mechanics, materialmen, *etc.* No liens had been filed and the plaintiff was not personally liable but contended that the non-payment by the Aimwell Co. of outstanding claims was a breach of the condition of the bond. *Held,* three judges dissenting, for the defendant, the bond being one of strict indemnity. *Schwartz & Co.* v. *Aimwell Co. & National Surety Co.* (N. Y. Ct. of App. 1919) 124 N. E. 892.

The decision in the instant case depends upon whether the bond was conditioned against actual loss or against liability. If the former, the plaintiff not having suffered any loss cannot recover, *Sheard* v. *United States Fidelity & Guaranty Co.* (1910) 58 Wash. 29, 107 Pac. 1024, but if the latter, the outstanding claims not having been paid were a liability even though no lien had been filed and constituted a breach of the bond. *Stuart* v. *Carter* (1916) 79 W. Va. 92, 90 S. E. 537; *Trinity Parish* v. *Ætna Indemnity Co.* (1905) 37 Wash. 515, 79 Pac. 1097. It is for the court to say from the intent and meaning as expressed in the bond whether there has been a breach. See *Stuart* v. *Carter, supra.* Where the condition is to keep and save harmless from liens, there can be no recovery until actual loss has been suffered, *Carson Opera House Assn.* v. *Miller* (1881) 16 Nev. 327, but where the obligation of the surety is on condition that the contractor will faithfully comply with all the terms, *Closson* v. *Billman* (1904) 161 Ind. 610, 69 N E. 449 (liens already filed); *Orinoco Supply Co.* v. *Shaw Bros. Lumber Co.* (1912) 160 N. C. 428, 76 S. E. 273; *Trinity Parish* v. *Ætna Indemnity Co., supra* (recovery allowed for unpaid claims though no liens were filed for them), or to settle all unsatisfied claims, *Lowenthal* v. *McElroy* (1914) 181 Mo. App. 399, 168 S. W. 813, or to save harmless from all liens or claims, see *Brown & Haywood Co.* v. *Ligon* (C. C. 1899) 92 Fed. 851; *contra, Village of Argyle* v. *Plunkett* (1919) 226 N. Y. 306, 124 N. E. 1, recovery is allowed before any loss. The defendant surety company in the instant case made itself liable for the performance of the terms of the contract by the defendant tenant. One of those terms was that the tenant pay all claims for materials *etc.* The tenant defaulted and as the surety was liable for that default, see *Stuart* v. *Carter, supra,* the conclusion reached by the minority seems the sounder view.

LANDLORD AND TENANT—LEASE—EXTENSION OR RENEWAL—STATUTE OF FRAUDS.—The plaintiff gave the defendant a lease of his farm for a year, and there was a stipulation in the lease that the lessee was to have the refusal of the place for the following two years. The lessee did not give written notice of his election to extend the lease. In an action of unlawful detainer, *held,* written notice was not necessary to extend the lease. *Neal* v. *Harris* (Ark. 1919) 216 S. W. 6.

There is a distinction between a lease containing what is regarded as a covenant to renew, *Steen* v. *Scheel* (1895) 46 Neb. 252, 64 N. W. 957; *James* v. *Kibler's Adm'r* (1896) 94 Va. 165, 26 S. E. 417, and one containing what is regarded as a mere provision for an extension. In the former case, the execution of a new lease is required, *Leavitt* v. *Maykel* (1909) 203 Mass. 506, 89 N. E. 1056; *cf. Fergen* v. *Lyons* (1916) 162 Wis. 131, 155 N. W. 935, and hence in the absence of a formal instru-

ment of renewal, written notice may be important to satisfy the Statute of Frauds. *Cf. Beller* v. *Robinson* (1883) 50 Mich. 264, 15 N. W. 448; see Smith, Law of Frauds, § 355 (o). In the latter case, a new lease need not be executed because the old lease is construed as a present demise for the full term to which it may be extended, and therefore no question of the Statute of Frauds arises. *Luthey* v. *Joyce* (1916) 132 Minn. 451, 157 N. W. 708; *cf. Ward* v. *Hasbrouck* (1902) 169 N. Y. 407, 419, 62 N. E. 434. While this distinction has been recognized generally, Tiffany, Landlord and Tenant, § 218; *Grant* v. *Collins* (1914) 157 Ky. 36, 162 S. W. 539, New York has recently repudiated it. *Orr* v. *Doubleday, Page & Co.* (1916) 172 App. Div. 96, 100, aff'd (1918) 223 N. Y. 334, 340, 80 N. E. 195. What agreement is made is a question of construction of the particular lease, *Holley* v. *Young* (1876) 66 Me. 520, but as a new lease involves trouble and expense, the rule is that in the absence of any contrary provision, an extension is generally held to be intended. Underhill, Landlord and Tenant, § 803; *Woodcock* v. *Roberts* (N. Y. 1873) 66 Barb. 498. Since the court in the instant case construed the instrument as an extension lease, it would seem that there was no necessity even for oral notice, as the lessee held over one month before notice to quit was received. If a lessee has the privilege to extend and notice is not specifically required, mere continuance in possession is regarded as showing an election, *Delashman* v. *Berry* (1870) 20 Mich. 292; *cf. Quinn* v. *Valiquette* (1908) 80 Vt. 434, 68 Atl. 515, binding on the lessee as well as on the lessor. *Hayes* v. *Goldman* (1903) 71 Ark. 251, 254, 72 S. W. 563. This rule, however, is one only of presumption. *Atlantic National Bank* v. *Demmon* (1885) 139 Mass. 420, 1 N. E. 833; *Lyons* v. *Osborn* (1891) 45 Kan. 650, 26 Pac. 31. If there is an express stipulation for notice, such notice is necessary. *Bluthenthal* v. *Atkinson* (1910) 93 Ark. 252, 258, 124 S. W. 510. But the court is correct in stating that in the absence of any agreement to the contrary, oral notice is sufficient. *Broadway & Seventh Ave. R. R.* v. *Metzger* (1891) 15 N. Y. Supp. 662. Even the requirement of written notice may be waived orally, *McClelland* v. *Rush* (1892) 150 Pa. 57, 24 Atl. 354; *contra, Beller* v. *Robinson, supra,* or by acquiescing in the holding over. *Probst* v. *Rochester Steam Laundry Co.* (1902) 171 N. Y. 584, 64 N. E. 504.

LARCENY—INTOXICATING LIQUOR UNDER PROHIBITION LAW.—The defendant was indicted for stealing whiskey from one who was holding it illegally under a state prohibition law. A conviction for larceny was sustained. *State* v. *Donovan* (Wash. 1919) 183 Pac. 127.

According to the traditional definition, larceny must involve an invasion of the right of possession. It is often said that possession is always deemed rightful against anyone who cannot show a better right, *Hubbard* v. *Little* (1852) 63 Mass. 475; *Ward* v. *People* (N. Y. 1842) 3 Hill 395, and on this reasoning a conviction similar to the one in the principal case has been sustained. *Commonwealth* v. *Coffee* (1857) 75 Mass. 139. But this statement is too broad. It is correct when the illegality of possession results from the mode of acquisition, but when possession is illegal because of the "inherent vice" of the thing itself, the law recognizes no rights at all. *Spalding* v. *Preston* (1848) 21 Vt. 9. Similarly, if a thing be incapable of ownership, as a corpse, the law recognizes no rights in it. 2 East. P. C. 606. And since, when the possession of whiskey is illegal, it is because of the article's "inherent vice," by strict logic its theft can invade no right